

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MICHELLE CARTER

Plaintiff(s),

-against-

17-CV-539-AMD-SLT

JPMORGAN CHASE BANK, N.A.

Defendant(s).

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JPMORGAN CHASE BANK, N.A.,

Third-Party Plaintiff,

-against-

DAHLEEL 1, INC., DD/B/A ROCKAWAY FARM
DELI & GRILL, ET AL,

Third-Party Defendant(s)

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THIRD PARTY DEFENDANT, MUKHTER OMAIRAT'S REPLY TO CROSS-CLAIM

OF SALAH M. OMAIRAT AND MAZEN DELI GROCERY CORP.

Third-Party Defendant, MUKHTER OMAIRAT (hereinafter referred to as "Mukhter"), by his attorneys, THE VOLAKOS LAW FIRM, P.C., as and for his Reply to the Cross-Claim ("Cross-Claim") of Third Party Defendants SALAH M. OMAIRAT ("SALAH") AND MAZEN DELI GROCERY CORP. ("MAZEN") dated February 16, 2018 alleges as follows:

1. Denies knowledge or information sufficient to form a belief as to the truth to each and every allegation in paragraph 18.
2. Denies knowledge or information sufficient to form a belief as to the truth to each and every allegation in paragraph 19.
3. Denies knowledge or information sufficient to form a belief as to the truth to each and every allegation in paragraph 20.

4. Denies each and every allegation as contained in paragraph 21 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
5. Denies each and every allegation as contained in paragraph 22 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
6. Denies each and every allegation as contained in paragraph 23 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
7. Denies each and every allegation as contained in paragraph 24 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
8. Denies each and every allegation as contained in paragraph 25 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
9. Denies each and every allegation as contained in paragraph 26 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.
10. Denies each and every allegation as contained in paragraph 27 of the cross-claim as it pertains to Mukhter and denies knowledge or information sufficient to form a belief as to the truth or falsity of all other allegations as contained therein.

AFFIRMATIVE DEFENSES

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

11. Salah and/or Mazen are barred Cross-Claim is barred against Mukhter under the doctrine of *in pari delicto*, as Salah, acted individually, or in concert with other Third-Party Co-Defendants, to the extent any wrongful act was committed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

12. Salah and Mazen's Cross-Claim is barred by reason of the applicable statute of frauds.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

13. To the extent Mukhter is liable to Third Party Plaintiff and/or to any other Third-Party Co-Defendant, his liability must be reduced and offset by comparative degree of fault of Salah and/or Mazen in causing and contributing to the damages alleged in the Amended Complaint and in the Third-Party Complaint.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

14. Salah and Mazen have failed to state claims against Mukhter upon which relief can be granted.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

15. Salah and Mazen's Cross-Claim is barred by their failure to mitigate their damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

16. Salah and Mazen's Cross-Claim is barred as they come before the Court with unclean hands, inter alia, by their virtue of their knowing and active involvement with Third Party Co-Defendant, Ammar Awawdeh ("Ammar") in the wrongful acts alleged in the pleadings.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

17. Upon information and belief, the acts or omissions of Salah, individually, and on behalf of Mazen, or Ammar and/or other individuals known or unknow to the Mukhter, were the

proximate cause of all losses as alleged in the Carter Amended Complaint, the Third-Party Complaint, as well as any losses that Salah and Mazen sustained or will sustain.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

18. Mukhter's use of the subject funds was done at the direction of, and with the permission, authorization, consent and/or acquiescence of, Salah and/or Ammar.

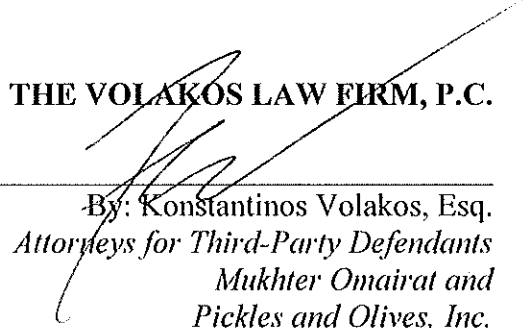
AS AND FOR A NINTH AFFIRMATIVE DEFENSE

19. Mukhter's and Pickles & Olives, Inc. use of the subject funds was done at the direction of, and with the permission, authorization, consent and/or acquiescence of, Michele Carter.

WHEREFORE, it is respectfully requested that the Court grant judgment (a) dismissing the Cross-Claim interposed by Salah and Mazen; and (b) costs and disbursements of this action and replying to the Cross-Claim interposed by Salah and Mazen; and (c) for such other and further relief as this Court deem just, equitable and proper.

Dated: Brooklyn, New York
March 22, 2018

THE VOLAKOS LAW FIRM, P.C.


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